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SOME RECENT LEGISLATIVE TENDENCIES.

Nineteen hundred and seven was a favorite year for the meeting of state legislatures. During the odd-numbered years thirty-five states and territories hold biennial and seven states and territories annual sessions, so that regularly forty-two legislatures meet every other year. In addition, we had last year the quadrennial session in Alabama. Compared with the fifteen regular and the six special sessions of nineteen hundred and six these forty-three legislatures have afforded great opportunities to the student of comparative legislation.

The year was noticeable not only for the legislatures which met, but also for the large number of laws which they enacted. At the close of the sessions, many of which were prolonged to an unwonted length, the record of statutes passed exceeded in most cases, both in size and number, that of previous years. One who has watched the work of legislatures for a considerable period knows that this is not a sporadic impulse on the part of the law-makers of this year, for the size of the volumes of session laws of the different states has been constantly increasing. In spite of the general tendency to do away with much of the special legislation there is no diminution in the bulk of the law.

The titles only of the acts passed by the legislatures of 1907 reveal at once the great variety of subjects covered. Nearly every department of human activity has been in some way affected by legislative action. Not only is there the usual amount of law concerning our state governments and their revenues, together with much concerning the various local units, but in addition we find a large number of laws affecting business in its various aspects; regulating different corporations, particularly insurance, railway and other public service companies; and much of importance relating to the public health, agriculture, the status of the laboring man, and the family.

In this infinite variety the statute book of to-day is a great contrast to that of twenty or thirty years ago. The old laws concerned themselves largely with the necessary regulation of the various departments of government, and with the courts and their procedure, together with more or less modification or affirmance of the principles of the common law. Many of the subjects upon

which we have recently had the greatest amount of legislation could hardly be found in an index to a volume of session laws issued twenty years ago.

Not only has there been a great increase in the variety of subjects with which the legislature deals, but these subjects are also being regulated with greater minuteness. Taking an example from a field in which lawmakers have recently been very active, we find among the session laws of 1907, not only a regulation of the rates, both freight and passenger, which railways may charge, but laws fixing the time within which they must furnish cars when demanded by a shipper; the rate at which the freight must be moved when it is started; the number of employees that must be carried upon each train; the hours of labor of employees; and the style of headlights; and, in addition, laws requiring permission from some public board before new railways can be built or old ones extended. Similar examples might be given from many other fields of legislative activity.

This increase in the range of subjects covered by modern statutes, especially when the matters dealt with are so minutely regulated, means that the legislature must take more time in the performance of its duties. This was evident in the increased length of the sessions of nineteen hundred and seven. Legislatures which met early in the winter were still in session at the end of June, while some continued into July. Not only did they thus cover a longer period of time, but it is probable that more actual days of legislative work were included. The practice of giving railroad passes to legislators has been almost universal until the past few years. Not long ago some of the states prohibited public officers from receiving such favors. Many more states are now prohibiting their issuance by the companies, except to persons in railway employment. Even where they are not prohibited, it is now much harder for the public official to obtain them. The old legislator could remain at the capital for a few days during the week and then go home to attend to his business, for the trip cost him nothing, but under the changed conditions stern financial necessity is compelling the lawmaker to remain at the seat of government most of the session.

It may be questioned, however, whether this increase in time was proportionate to the augmentation in the work which the legislators had to do. The ordinary legislative session is held

during the winter months. With the approach of the warmer weather the farmers become anxious to return for their spring planting, the business man feels that his business has been long neglected and needs his personal attention, the lawyer feels the pressure of cases which he has had postponed over the term, and there is a general unrest among all the members and a feeling that an early adjournment is desirable. Such an early adjournment could very likely have been had without affecting the quality of the laws by a legislature dealing with the limited range of subjects which formerly received attention. In the modern legislature, with the numerous bills concerning questions about which most of the members knew little when they took their seats, and the demand for action upon such a varied range of subjects, a greater tax has been placed upon the time of the legislator. If such a minute regulation as we now have is desirable, and it seems to be inevitable, this regulation must be with care and knowledge, or it will prove of more harm than good. With work properly done, the early adjournment is an impossibility and the legislator is forced to remain at the capital while his own private business suffers.

In this country, at least as far as state legislatures are concerned, conditions have been such that it has been practically impossible for one to adopt law-making as a vocation. The salaries are usually insufficient to pay even the actual legitimate expense of securing an election to office and the additional expense caused by a residence at the state capital. Our theory is that the legislator is a man with a regular business or profession, and that the legislative session need not interfere with his regular earnings. That theory is becoming somewhat disturbed by the increased time and attention required for the making of laws.

It is undoubtedly true that there were in the past many members of legislatures who made law-making their business, and to whom it was very profitable. I believe, however, that the number of these has been constantly diminished during recent years. We must hope that this tendency is not to be checked by an increasing demand upon the time of the legislators and that the new conditions will not involve a return to the type of legislator comparatively common during past years. It must be remembered, however, that we have not in this country any leisure class from which we can draw our lawmakers, and even if such a class is being created the turning over of legislation to it would be a step out of harmony with American institutions.

In the enactment of this large amount of legislation the law-makers are undoubtedly acting in response to a very decided public sentiment. Much has been heard recently of the failure of our legislatures to carry out the will of the people, and various expedients, such as the initiative and the referendum, have been advocated for the purpose of bringing the legislators more directly under the control of their constituents. It is apparent, however, that, while legislatures may not always enact laws in exact accordance with popular desire, yet they are not irresponsive to public opinion, as appears from the great extent and variety of the laws which they pass. The members of the legislature would not spend their time away from their own affairs and continue in session as they did in many cases during the past year, unless they were meeting what appeared to them to be a real demand on the part of the people.

The constant increase in our statutes makes more necessary an improvement in the form of their expression. A clear statement of legal principles is of course always desirable, whatever may be their extent. We can, however, more easily pardon prolixity and redundancy in a short volume of statutes than we can in a long volume. The evil is there in both cases, but its consequences increase faster than the bulk of the statutes.

Statutes have long been known as giving striking examples of bad English. They could afford material for the "Things Which One Would Have Expressed Differently" of our comic papers. A classic example of this is the act which gave half the penalty to the informer and half to the poor of the parish—the penalty being transportation for fourteen years. A more modern instance is that of the Montana legislature of nineteen hundred and seven, which enacted that no hotel or boarding house can serve adulterated food unless there is posted in the dining room a large red sign, on which is printed "We Serve on Our Tables No Food Stuffs Which Have Been Harmfully Adulterated."

Improvement in the form of statute law is slow. England has progressed much farther than the United States in this. Since 1869 the office of the English Parliamentary Counsel has been engaged in the drafting of bills. It is to the principles laid down by that office, and particularly by Lord Thring and Sir Courtenay Ilbert, that American legislatures must look for guidance.

Some states have made progress in this line by the appointment of official draftsmen, their services being at the command of any

member whose duty it is to put the ideas of the legislators into proper form. Little effect of this is seen in the legislation of nineteen hundred and seven, for it is too soon to hope for much improvement, but the movement cannot but be beneficial to our statute books.

Increase in legislation, not only demands more time from legislators, but also greater skill. When statutes cover, not only forms of government, administration and procedure, but are concerned with the regulation of nearly every branch of human activity, their enactment requires wisdom of a high order. The ideal twentieth-century lawmaker should know, not only law in the narrow sense, but also engineering, science, medicine, sociology and business. An act regulating railroads may involve technicalities of railway engineering; it may profoundly affect the business of the country; it may occasion delicate questions of labor and capital, or it may concern the health of the public.

It is too much to expect that each legislator will be a lawyer, a doctor, an engineer, an economist and a business man. The situation, however, shows the importance of electing men of sufficient breadth of view to appreciate the responsibilities placed upon them and to use the technical knowledge of experts. The legislator cannot be both a doctor and an engineer, but he must be willing and able to turn to the doctors and engineers and use their knowledge.

One method whereby the legislators seek to obtain information which may aid them in their task is the creation of special investigation committees and general commissions. The new insurance laws of New York, which have been followed by a large number of states, were the result of the recommendations of the special legislative committee. The laws upon the same subject in Wisconsin, which are more far-reaching in their results than probably those of any other state, were recommended by a similar committee. In that state those laws followed, on the whole, the recommendations of this special committee, rather than the recommendations of the regular committees of the legislature.

Commissions whose duties are both administrative and advisory have been created in a number of states. The most frequent examples of these commissions are those concerned with the regulation of railroads and other public service corporations, or with taxation. Their duties are primarily administrative, although they are often required to submit recommendations to the legislature.

Their purely administrative work, however, is apt to be so large that little time is left for a systematic study of the subject and for the framing of recommendations. Their advice has undoubtedly been followed by the legislatures in a large number of cases. In some instances, however, the legislatures have disregarded their recommendations, the most noticeable case of this during the past year being the enactment of a two-cent fare law in Wisconsin, almost immediately following the finding of the Railroad Commission that such a rate would not allow a fair return to the railroads.

Except for the purposes of general statutory revision, the states have never adopted the idea of special commissions whose sole duty shall be to make recommendations upon legislation. Such commissions have been frequently advocated and their creation would in some cases probably be of material assistance to the legislators. It may be questioned, however, whether such a plan would meet with general approval, principally because of the concentration of power and influence in these special commissions. The legislature would usually desire only that facts upon a subject should be obtained for it, reserving to itself the question of the direction in which there should be legislative action.

The diversity between the states probably makes any exact uniformity in legislation undesirable. A law of Alabama cannot be adopted bodily in California, nor will the legislation of New York always bear transportation to Texas. Yet each state can benefit by the experience of the others and thereby gain both in time and knowledge. An inspection of the laws of the past year shows that there has been much of this borrowing. It does not appear, however, to have been done with intelligence. Too often the legislator, finding a law of another state covering his subject, takes it as his model without further consideration. No important legislation should be undertaken without full knowledge of what other states are doing, but this knowledge should include, not only the text of the law, but an appreciation of how the law worked in practice and of the construction given it by the judiciary. It is presumed that when a law is taken from another state the construction placed upon it by the courts of that state is also adopted. As far as this presumption is based upon an idea that the decisions construing the law thus adopted have been actually examined by the legislature it is largely a legal fiction.

The idea that legislators should be furnished with information which will enable them to act more intelligently has resulted in a few states in the establishment of legislative bureaus or libraries, whose object is to obtain information upon all questions pending before the legislature. One type is that found in Wisconsin, where a branch of the state library undertakes to collect materials upon all subjects of current legislative interest. These materials consist, not only of books, but of pamphlets, briefs, newspaper clippings, etc., the object being to present to the legislator information upon all sides of the question. Such a library must, if it is to fulfill its true function, be absolutely impartial. Those in charge must regard each bill without dislike or favor, and must gather all the materials, both for and against the proposition. The object of such bureau is not to argue or lobby for or against any measure, but to afford the facilities whereby the legislator may more intelligently consider the stand which he will take.

This sort of library is entirely different from the proposition which has been advanced for the establishment of a "People's Lobby." The object of this latter institution is not to present impartial information, but to decide what measures it believes are for or against the people's interests, and to take a stand for or against such measures and the legislators who favor or oppose them. The legislative bureau should be an impartial investigator, while the "People's Lobby" cannot lay claim to impartiality.

Another sort of work which is affording legislators information is that done by the Albany State Library. This consists in the indexing of all laws of general interest and the issuing of bulletins commenting upon legislation of each year. Such a work is supplemental to the work already described, such as is carried on by the Wisconsin library. Both are, if properly done, of the utmost importance in the improvement of legislation.

The modern idea is that all human activity is within the regulative sphere of the legislature. Whether it be for good or ill, the *laissez faire* doctrine in economics and politics has been abandoned. This modern theory places more demands upon the legislator. It takes more of his time as well as greater ability. If this universal regulation is to be successful, legislative standards must be raised, and broad men, who can use the results of modern investigation, must be chosen as legislators.

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